

U.S. District Court
Northern District of New York – Main Office (Syracuse) [NextGen CM/ECF
Release 1.2 (Revision 1.2)] (Albany)
CIVIL DOCKET FOR CASE #: 1:18-cv-00352-GTS-TWD

Pendell v. United States Secret Service
Assigned to: Chief Judge Glenn T. Suddaby
Referred to: Magistrate Judge Therese Wiley Dancks
Cause: 05:552 Freedom of Information Act

Date Filed: 03/21/2018
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff**Perry Pendell**

represented by **Perry Pendell**
14-A-3835
Coxsackie Correctional Facility
P.O. Box 999
Coxsackie, NY 12051-0999
PRO SE

V.

Defendant**United States Secret Service**

represented by **Cathleen B. Clark**
U.S. Department of Justice – Albany
Office
445 Broadway, Room 218
James T. Foley Courthouse
Albany, NY 12207-2924
518-431-0247
Fax: 518-431-0386
Email: cathleen.b.clark@usdoj.gov
ATTORNEY TO BE NOTICED

Defendant**Kim Campbell**

*Special Agent in Charge – Freedom of
Information Act and Privacy Act Officer*
TERMINATED: 06/06/2018

Date Filed	#	Docket Text
03/21/2018	<u>1</u>	COMPLAINT against Kim Campbell, United States Secret Service filed by Perry Pendell. (Attachments: # <u>1</u> Exhibits A–V, # <u>2</u> Civil Cover Sheet, # <u>3</u> Cover Letter, # <u>4</u> Envelope)(hmr) (Entered: 03/22/2018)
03/21/2018	<u>2</u>	MOTION for Leave to Proceed in forma pauperis filed by Perry Pendell. (Attachments: # <u>1</u> Proposed Summons for United States Secret Service – Kim Campbell Motions referred to Therese Wiley Dancks. (hmr) (Entered: 03/22/2018)
03/21/2018	<u>3</u>	INMATE AUTHORIZATION FORM by Perry Pendell. (hmr) (Entered: 03/22/2018)
03/21/2018	<u>4</u>	MOTION to Appoint Counsel filed by Perry Pendell. Motions referred to Therese Wiley Dancks. (hmr) (Entered: 03/22/2018)
03/22/2018	<u>5</u>	PRO SE HANDBOOK and NOTICE (pro se packet) mailed to pro se plaintiff, Perry Pendell via regular mail on 3/22/2018. (hmr) (Entered: 03/22/2018)
04/04/2018	<u>6</u>	Letter Motion from Perry Pendell requesting clarification of the number and initials that are written on top of the pro se notice. Also enclosed the pro se notice, he states in this letter that it was signed by him, but the notice was unsigned. Also enclosed a couple of letters he received from attorneys regarding his <u>4</u> Motion to Appoint

		Counsel. (hmr) (Entered: 04/04/2018)
04/09/2018	<u>7</u>	ORDER AND REPORT RECOMMENDATION: re <u>1</u> Complaint filed by Perry Pendell: Ordered that Plaintiff's IFP Application (Dkt. No. <u>2</u>) is Granted; Recommended that this action be dismissed as against individual Defendant Kim Campbell; Recommended that if the District Court adopts this Report–Recommendation, the Clerk shall issue a summons and forward it, along with a copy of the complaint containing General Order 25, which sets for the Civil Case Management Plan used by the Northern District of New York, to the United States Marshal for service upon Defendant USSS; Recommended that a formal response to Plaintiff's complaint be filed by Defendant USSS as provided for in the Federal Rules of Civil Procedure subsequent to service of process on Defendant; Ordered that Plaintiff's motion for appointment of counsel (Dkt. No. <u>4</u>) is Denied without Prejudice; Ordered that Plaintiff's April 4, 2018, letter motion (Dkt. No. <u>6</u>) is Denied as Moot and Ordered that the Clerk provide Plaintiff with a copy of this Order and Report–Recommendation and General Order 25, along with copies of the unpublished decisions cited herein in accordance with Lebron v. Sanders, 557 F.3d 76 (2d Cir. 2008) (per curiam). (Objections to R&R due by 4/26/2018, Case Review Deadline 4/30/2018) Motions terminated: <u>4</u> MOTION to Appoint Counsel filed by Perry Pendell, <u>6</u> Letter Motion from Perry Pendell for Perry Pendell requesting clarification of what was written on top of the pro se notice, filed by Perry Pendell, <u>2</u> MOTION for Leave to Proceed in forma pauperis filed by Perry Pendell. Signed by Magistrate Judge Therese Wiley Dancks on 04/09/2018. (Copy served upon pro se plaintiff via regular mail at Coxsackie Correctional Facility on 4/9/2018.)(hmr) (Entered: 04/09/2018)
06/06/2018	<u>8</u>	DECISION and ORDER: that Magistrate Judge Dancks' Report–Recommendation (Dkt. No. <u>7</u>) is Accepted and Adopted in its entirety; that Plaintiff's claims against Defendant Kim Campbell are sua sponte Dismissed with prejudice for lack of subject–matter jurisdiction; that Plaintiff's claims against Defendant United States Secret Service survive the Court's sua sponte review of his Complaint; that the Clerk of the Court is directed to issue a Summons and forward it, along with a copy of the Complaint containing General Order 25 (which sets forth the Civil Case Management Plan used by the Northern District of New York), to the U.S. Marshal for service upon Defendant USSS; and that, after service of process, Defendant USSS shall file a response to Plaintiff's Complaint in accordance with the Federal Rules of Civil Procedure. Signed by Chief Judge Glenn T. Suddaby on 06/06/2018. (Copy served upon pro se plaintiff at Coxsackie Correctional Facility via regular mail on 6/7/2018.)(hmr) (Entered: 06/07/2018)
06/07/2018	<u>9</u>	TEXT ORDER directing the U.S. Marshal Service to serve the Summons, Complaint and G.O. 25 upon Defendant U.S. Secret Service, the U.S. Attorney and the Attorney General pursuant to Rule 4 of the Fed.R.Civ.P. SO ORDERED by Chief Judge Glenn T. Suddaby on 6/7/18. (lmw) (Entered: 06/07/2018)
06/07/2018	<u>10</u>	Summons Issued as to United States Secret Service. (Attachments: # <u>1</u> Summons Issued for Offices of the United States Attorneys, # <u>2</u> Summons Issued for the Attorney General of the United States)(hmr) (Entered: 06/07/2018)
06/08/2018	<u>11</u>	TEXT ORDER: Court has reviewed docket and notes that because this is a pro se matter involving the claim of an inmate, General Order 25 should not be issued. Therefore, the Clerk is directed to forward the summons and complaint only to the Marshal for service pursuant to Dkt. No. <u>9</u> . Once issue is joined, the Court will issue a scheduling order. SO ORDERED by Magistrate Judge Therese Wiley Dancks on 6/8/2018. (A copy of this Text Order has been served on pro se party(ies) via regular mail.)(sg) (Entered: 06/08/2018)
06/27/2018	<u>12</u>	ACKNOWLEDGMENT OF SERVICE (USM 285 Form) Executed as to United States Secret Service served on Attorney General on 6/20/2018, answer due 8/20/2018. (jlb) (Entered: 06/27/2018)
06/27/2018	<u>13</u>	ACKNOWLEDGMENT OF SERVICE (USM 285 Form) Executed as to US Attorney. (jlb) (Entered: 06/29/2018)
07/23/2018	<u>14</u>	ANSWER to <u>1</u> Complaint by United States Secret Service. (Attachments: # <u>1</u> Affidavit Of Service)(Clark, Cathleen) (Entered: 07/23/2018)

07/24/2018	<u>15</u>	MANDATORY PRETRIAL SCHEDULING ORDER: Document discovery to be completed by 9/24/2018. All Discovery due by 11/21/2018. Discovery Motions, such as motions to compel, to be filed by 12/3/2018. Dispositive Motions to be filed by 2/19/2019. Signed by Magistrate Judge Therese Wiley Dancks on 7/24/2018. (A copy of this Scheduling Order has been served on pro se party via regular mail.)(sg) (Entered: 07/24/2018)
07/30/2018	<u>16</u>	Letter Motion from Perry Pendell requesting permission to file a motion for summary judgment or a reply to defendant's answer. Also requests a return date and a form for summary judgment. (hmr) (Entered: 07/30/2018)
07/31/2018	<u>17</u>	BILL OF COSTS submitted by US Marshal re: Service Fees totaling \$81.00. (hmr) (Entered: 07/31/2018)
07/31/2018	<u>18</u>	Summons Returned Unexecuted as to United States Secret Service. (hmr) (Entered: 07/31/2018)
08/02/2018	19	TEXT ORDER: Court has reviewed Plaintiff's letter motion (Dkt. No. <u>16</u>) to file a reply to the Answer, which is denied. No counterclaims are made in the answer and therefore the Court finds a reply is unnecessary. Plaintiff should note the Court's pretrial discovery schedule (Dkt. No. <u>15</u>); Plaintiff may file a summary judgment motion at anytime on or before the dispositive motion deadline of 2/19/2019. However, Plaintiff may wish to obtain discovery prior to making a summary judgment motion. SO ORDERED by Magistrate Judge Therese Wiley Dancks on 8/2/2018. (A copy of this Text Order has been served on pro se party(ies) via regular mail.) (sg) (Entered: 08/02/2018)
08/15/2018	<u>20</u>	Letter from Pendell to the US Marshals providing additional documents for service on US Secret Service. (Attachments: # <u>1</u> envelope)(nas,) (Entered: 08/15/2018)
08/16/2018	<u>21</u>	**STRICKEN pursuant to the 8/17/2018 Text Order of Magistrate Judge Dancks***INTERROGATORIES by Perry Pendell. (Attachments: # <u>1</u> Cover letter and copy of letter from United States Marshals Service, # <u>2</u> Envelope)(hmr) Modified on 8/17/2018 (sg,). (Entered: 08/16/2018)
08/17/2018	22	TEXT ORDER TO STRIKE re: <u>21</u> Discovery filed by Perry Pendell. It is hereby ORDERED, that Dkt. <u>21</u> shall be stricken from the docket for the following reason. Because Plaintiff's submission is being stricken from the docket it will not be considered by the Court. Pursuant to Local Rule 26.2, the Court does not accept the filing of discovery materials, such as interrogatories and document demands, unless the Court specifically directs such documents be filed or when submitted in support of a motion filed pursuant to Rule 37 of the Federal Rules of Civil Procedure. Since the Court has not directed the filing of the discovery in this action nor is Plaintiff's submission in support of a motion filed pursuant to Rule 37, neither discovery materials nor certificates of service regarding the same are to be filed with the Court. SO ORDERED by Magistrate Judge Therese Wiley Dancks on 8/17/2018. (A copy of this Text Order has been served on pro se party(ies) via regular mail.)(sg) (Entered: 08/17/2018)
11/16/2018	<u>23</u>	Letter Motion from Perry Pendell requesting a stay for discovery submitted to Judge Therese Wiley Dancks. (hmr) (Entered: 11/16/2018)
11/19/2018	24	TEXT ORDER: Court reviewed letter motion (Dkt. No. <u>23</u>) for stay of discovery, which is denied. However, discovery deadline extended to 12/21/2018. Discovery Motions due 12/28/2018. Dispositive motion deadline remains 2/19/2019. SO ORDERED by Magistrate Judge Therese Wiley Dancks on 11/19/2018. (A copy of this Text Order has been served on pro se party(ies) via regular mail.) (sg) (Entered: 11/19/2018)
01/09/2019	25	TEXT ORDER STAYING CASE: Discovery closed as of 12/21/2018. (Dkt. No. 24.) However, due to lack of budget appropriations and pursuant to General Order #48, this case is STAYED for all remaining deadlines (here, discovery motions and dispositive motions) until the business day after the President signs into law a budget appropriation that restores Department of Justice funding; and it is further ORDERED that all deadlines, including scheduling order deadlines and seal deadlines in qui tam cases, are tolled for the duration of the Government shutdown and extended thereafter for a period of time equal to the number of days between 12/22/2018 and the date the President signs into law a budget appropriation that restores Department of Justice

		<p>funding, unless otherwise ordered by the Court. The United States Attorney's Office shall notify the Court within 10 business days after restoration of Department of Justice funding so that the stay may be lifted and relevant deadlines reset. SO ORDERED by Magistrate Judge Therese Wiley Dancks on 1/9/2019. (copy of Text Order served on pro se party via regular mail.)(sg) (Entered: 01/09/2019)</p>
01/29/2019	<u>26</u>	STATUS REPORT <i>Regarding End of Government Shutdown</i> by United States Secret Service. (Clark, Cathleen) (Entered: 01/29/2019)
01/30/2019	27	TEXT ORDER LIFTING STAY: As the Court has been notified by the Department of Justice that appropriations have been restored, the stay of this case is lifted and progression of the case may resume. Relevant deadlines will be reset by separate text notice. SO ORDERED by Magistrate Judge Therese Wiley Dancks on 1/30/2019. (A copy of this Text Order has been served on pro se party(ies) via regular mail.)(sg) (Entered: 01/30/2019)
01/30/2019		TEXT NOTICE RE-SETTING DEADLINES: The following deadlines, which were not yet expired as of 12/22/2019, have been reset as follows: Discovery due by 2/19/2019. Discovery Motions due 2/26/2019. Dispositive Motions to be filed by 4/22/2019. (A copy of this Text Order has been served on pro se party(ies) via regular mail.) (sg, (Entered: 01/30/2019)
04/16/2019	<u>28</u>	Letter Motion from United States for United States Secret Service requesting Extension of Dispositive Motion Deadline submitted to Judge Dancks . (Clark, Cathleen) (Entered: 04/16/2019)
04/17/2019	29	TEXT ORDER granting Defendant's <u>28</u> Letter Request for extension. Motions to be filed by 5/10/2019. Any further requests for extensions that do not contain a good cause reason for the request will be summarily denied. SO ORDERED by Magistrate Judge Therese Wiley Dancks on 4/17/2019. (copy of this text order served on pro se party via regular mail.) (sg) (Entered: 04/17/2019)
05/10/2019	<u>30</u>	MOTION for Summary Judgment Motion Hearing set for 6/20/2019 10:00 AM in Syracuse before Chief Judge Glenn T. Suddaby Response to Motion due by 6/3/2019 Reply to Response to Motion due by 6/10/2019. filed by United States Secret Service. (Attachments: # <u>1</u> Statement of Material Facts, # <u>2</u> Memorandum of Law, # <u>3</u> Declaration of Kim E. Campbell, # <u>4</u> Exhibit(s) Plaintiff's Complaint, # <u>5</u> Exhibit(s) Defendant's Answer, # <u>6</u> Appendix of Unreported Cases for Pro Se Plaintiff, # <u>7</u> Notification of Failure to Respond, # <u>8</u> Affidavit of Service) (Clark, Cathleen) (Attachment 3 replaced on 5/21/2019) (lmw,). (Additional attachment(s) added on 5/21/2019: # <u>9</u> Sealed Unredacted Declaration of Kim E. Campbell) (lmw,). (Entered: 05/10/2019)
05/10/2019		TEXT NOTICE on # <u>30</u> MOTION for Summary Judgment : Motion set for 6/20/2019 on submission of motion papers before Chief Judge Glenn T. Suddaby. No personal appearance. Response to Motion due by 6/3/2019. Reply to Response to Motion due by 6/10/2019. (lmw) (Copy served upon pro se plaintiff via regular mail) (Entered: 05/10/2019)
05/14/2019	<u>31</u>	Letter Motion for United States Secret Service requesting To Seal Exhibit 1 with attachments submitted to Judge HON. GLENN T. SUDDABY . (Attachments: # <u>1</u> Proposed Order/Judgment Seal Documents, # <u>2</u> Record Insert)(Clark, Cathleen) (Entered: 05/14/2019)
05/15/2019	32	TEXT ORDER denying without prejudice # <u>31</u> Defendant's letter-motion as unsupported by a showing of cause under Local Rule 83.13(a) and <i>Lugosch v. Pyramid Co. of Onondaga Cty.</i> , 435 F.3d 110, 125–26 (2d Cir. 2006). As a temporary remedial measure, the Clerk's Office is directed to immediately seal Dkt. No. <u>30</u> , Attach. 3, pursuant to Fed. R. Civ. P. 5.2(d), because information protected by Local Rule 8.1 is scattered throughout that document (e.g., pages 30, 107, 110, 111–15, 118, and 119). Meanwhile, Defendant is directed to show cause, within SEVEN (7) DAYS of this Text Order, why Dkt. No. <u>30</u> , Attach. 3, should not be STRUCK from the docket (and not considered by the Court) because it (1) violates Local Rule 8.1 as discussed above, and (2) redacts from the Court's view information on which Defendant relies (i.e., information redacted pursuant to 5 U.S.C. § 552). Defendant is advised that, in lieu of showing such cause, it may, within SEVEN (7) DAYS of this Text Order, do the following two things: (1) publicly file a version of the current Dkt. No. <u>30</u> , Attach. 3,

		<p>that redacts information protected by Local Rule 8.1; and (2) email to the undersigned's Courtroom Deputy (Lori_Welch@nynd.uscourts.gov), for sealed filing (to which Plaintiff will not have access), a completely unredacted version of the document contained in Dkt. No. <u>30</u> , Attach. 3. Upon the Court's receipt of the latter document, the Court will substitute it for the current Dkt. No. <u>30</u> , Attach. 3 (and keep it under seal). The parties are advised that any counsel Plaintiff should happen to retain during the course of this proceeding is hereby directed to not share the unredacted information contained in the latter document with Plaintiff, unless permitted to do so by the Court. SO ORDERED by Chief Judge Glenn T. Suddaby on 5/15/19. (lmw) (Copy served upon pro se plaintiff via regular mail) (Entered: 05/15/2019)</p>
05/20/2019	<u>33</u>	<p>Letter Motion from Cathleen B. Clark, Esq. for United States Secret Service requesting that the unredacted copy of Docket # <u>30</u> , Attach. 3 be filed under seal with proposed sealing order submitted to Judge Suddaby, and further requesting that the revised redacted copy of Docket # <u>30</u> , Attach. 3 now in compliance with Local Rule 8.1 be uploaded onto the docket in place of the current Dkt. No. 303 filed on 5/10/19. (Attachments: # <u>1</u> Proposed Sealing Order)(lmw) (Entered: 05/21/2019)</p>
05/21/2019	34	<p>TEXT ORDER granting # <u>33</u> Defendant's letter-motion requesting that the unredacted copy of Dkt. No. <u>30</u> , Attach. 3 be filed under seal. Under the governing legal standard set forth in <i>Lugosch v. Pyramid Co. of Onondaga Cty.</i>, 435 F.3d 110, 125–26 (2d Cir. 2006), the Court concludes that the unredacted copy of Dkt. No. <u>30</u> Attach. 3 should be sealed. In rendering this conclusion, the Court finds that such sealing is (1) essential to preserve values higher than a qualified First Amendment right of access to the material in question and (2) narrowly tailored to serve that interest. As a result, the Clerk of the Court is directed upload a redacted copy of Dkt. No. <u>30</u> , Attach. 3 to Dkt. No. <u>30</u> at Attach. 9 and to place the document under seal. The Court bases this Text Order on Fed. R. Civ. P. 5.2(d) and Local Rule 83.13(a). The Court further grants Defendant's letter-motion to replace Dkt. No. <u>30</u> , Attach. 3 with the revised redacted version of that document which is now in compliance with Local Rule 8.1. SO ORDERED by Chief Judge Glenn T. Suddaby on 5/21/19. (lmw) (Copy served upon pro se plaintiff via regular mail) (Entered: 05/21/2019)</p>
05/21/2019		<p>CLERK'S CORRECTION OF DOCKET ENTRY: Docket No. <u>30</u> , Attachment 3 was replaced with a revised redacted version of the document so that personal identifiers were redacted, and this document is now unsealed. The unredacted version of the Declaration of Kim E. Campbell with exhibits was uploaded to Docket No. <u>30</u> at Attachment 9, and this document is SEALED pursuant to # 32 Text Order dated 5/15/19 and # 34 Text Order dated 5/21/19. (lmw) (Copy served upon pro se plaintiff via regular mail) (Entered: 05/21/2019)</p>